

REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on December 21, 2006. In the Amendment, 6 new dependent claims have been added. The Director is authorized to charge \$50 for each dependent claim (\$300 total) and any additional fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-324 on the account statement.

Claims 1-24 are pending in this application. Claims 16-19, 21, 23 and 24 are rejected under 35 U.S.C. §102(b). Claims 1-15, 20 and 22 are rejected under 35 U.S.C. §103(a). In response Claims 1-8, 10, 13 and 16-22 have been amended. These amendments do not add new matter. Claims 25-30 have been newly added. These Claims do not add new matter. In view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections are improper and should be withdrawn.

In the Office Action, Claims 16-19, 21, 23 and 24 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,142,366 to Sagel ("*Sagel*"). In view of the amendments and/or for the reasons set forth below Applicants respectfully request that the rejection be withdrawn.

As amended, independent Claim 16 recites, in part, a method of preparing a confectionery package material comprising forming a laminate having a plurality of laminate layers including an outer layer and an inner layer wherein at least a portion of the outer layer is weakened to an effective depth and corresponding to at least one location substantially between pieces of confectionery product and allowing single-handed access of the pieces of confectionery product packaged with the laminate. This amendment is supported in the specification at, for example, page 9, lines 3-13 and Figures 1, 2A-C and 3. Applicants respectfully submit that one having ordinary skill in the art would recognize that a confectionery package material may be weakened by any number of structural defects including, but not limited to, scoring or cutting of the material. See, specification, page 9, lines 7-8. In contrast, Applicants respectfully submit that *Sagel* fails to disclose or suggest each and every element of the present claims.

Sagel fails to disclose or suggest an outer layer of a laminate wherein at least a portion of the outer layer is weakened to an effective depth and corresponds to at least one location

substantially between pieces of confectionery product as required, in part, by currently amended Claim 16. Instead, *Sagel* is directed toward a breakaway container for food having thumb cut scoring and circumferential scoring. See, *Sagel*, Abstract. The circumferential scoring does not correspond to locations substantially between pieces of a confectionery product, for example, but rather corresponds to the depth of a remaining volume of food product contained in the container after a consumer has consumed a portion of the food product. See, *Sagel*, col. 3, lines 40-64. As such, *Sagel* fails to disclose or suggest each and every limitation of independent Claim 16.

For the reasons discussed above, Applicants respectfully submit that Claim 16 and Claims 17-19, 21 and 23-24 that depend therefrom are novel, nonobvious and distinguishable from *Sagel*.

Accordingly, Applicants respectfully request that the anticipation rejection of Claims 16-19, 21, 23 and 24 under 35 U.S.C. §102(b) to *Sagel* be withdrawn.

In the Office Action, Claims 1-15, 20 and 22 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Sagel* in view of applicants' admission of the prior art, or vice versa, both further in view of U.S. Patent No. 1,334,346 to Boehm ("*Boehm*"), U.S. Patent No. 4,290,526 to Haiss ("*Haiss*"), U.S. Patent No. 5,437,881 to Jeanin ("*Jeanin*"), U.S. Patent No. 3,986,640 to Redmond ("*Redmond*"), U.S. Patent No. 4,133,431 to Fischer ("*Fischer*"), U.S. Patent No. 3,472,368 to Hellstrom ("*Hellstrom*"), U.S. Patent No. 3,521,805 to Ward ("*Ward*"), and U.S. Patent No. 2,689,798 to Bond ("*Bond*"). In view of the amendments and/or for the reasons set forth below, Applicants respectfully request that the rejection be withdrawn.

As amended, independent Claim 1 recites, in part, a package material having one or more weakened regions corresponding to at least one location substantially between the pieces of confectionery product. Currently amended independent Claim 7 recites, in part, a laminate material having a plurality of weakened regions corresponding to locations substantially between pieces of confectionery product. The amendments are supported in the specification at, for example, page 9, lines 3-13 and Figures 1, 2A-C and 3. In contrast, Applicants respectfully submit that, even if combinable, all of the claimed elements are not taught or suggested by the cited references.

In contrast to the presently amended Claims, *Sagel*, Applicants' admission of the prior art, *Boehm*, *Haiss*, *Jeanin*, *Redmond*, *Fischer*, *Hellstrom*, *Ward* and *Bond* all fail to teach,

suggest, or even disclose a packaging material having one or more weakened regions corresponding to locations substantially between pieces of confectionery product.

For the reasons discussed above and even if properly combinable, *Sagel*, Applicants' admission of the prior art both in view of *Boehm*, *Haiss*, *Jeanin*, *Redmond*, *Fischer*, *Hellstrom*, *Ward* and *Bond* do not teach, suggest, or even disclose all of the elements of the present claims, and thus, fail to render the claimed subject matter obvious for at least these reasons.

Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claims 1-15, 20 and 22 be reconsidered and the rejection be withdrawn.

Further, the Patent Office alleges at page 4, line 21 – page 5, line 3, that the term “thereby” found in independent Claim 7 does not follow the recited steps because the Claim recitations do not impart the result recited after the word “thereby.” Applicants respectfully disagree and submit that the “thereby” clause contains a result properly imparted by the previously recited limitations. Specifically, a user is allowed to access the pieces of the confectionery product with a single hand because the pieces of confectionery product are packaged with a laminate material having a plurality of weakened regions corresponding to locations substantially between pieces of confectionery product. For example, the weakened region weakens the structural integrity of the package so that when a consumer's thumb is used to depress the package at or in the vicinity of the weakened region, the package breaks and the consumer may thereby access a piece of confectionery product without having to further tear the package to remove the piece.

Applicants further note that Claims 25-30 have been newly added. The new Claims are fully supported in the specification at, for example, page 6, lines 8-32; page 8, line 25-page 9, line 2; and Figure 2C. No new matter has been added thereby. Applicants respectfully submit that the subject matter as defined in the newly added claims is patentable over the cited art for at least substantially the same reasons as discussed above.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

BELL, ~~BOYD & LLOYD~~ LLC

BY 

Robert M. Barrett
Reg. No. 30,142
P.O. Box 1135
Chicago, Illinois 60690-1135
Phone: (312) 807-4204

Dated: March 21, 2007